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Senior DOJ Lawyer Donald Kempf Resigned Amid Misconduct Probe, Sources Confirm

A U.S. Justice Department inspector general investigation substantiated claims that the then-deputy assistant attorney general viewed sexually explicit images on government computers and that he made false statements to investigators. Kempf did not return messages seeking comment.

By C. Ryan Barber | October 16, 2019



U.S. Department of Justice. Photo: Diego M. Radzinski/NLJ.

Donald Kempf Jr., a former senior lawyer in the U.S. Justice Department's antitrust division, stepped down last year during an internal investigation that would conclude he viewed sexually explicit images on government computers and made false statements when he was questioned about the conduct, according to sources familiar with the probe.

The findings were outlined in a **one-page summary**.

(<https://assets.documentcloud.org/documents/6450475/2019-08-29-OIGSummary.pdf>) of the investigation by the Justice Department's inspector general, which did not identify Kempf but specified that the official had served as a deputy assistant attorney general.

Kempf, a former 35-year partner at the law firm Kirkland & Ellis who was later chief legal officer at Morgan Stanley, joined the Justice Department in June 2017 and oversaw antitrust litigation. He left the Justice Department in August 2018. Sources speaking anonymously in order to discuss internal personnel matters confirmed Kempf's identity as the lawyer referenced in the investigative summary.

Kempf did not respond to voice messages The National Law Journal left at his office and on his personal phone. Additionally, Kempf, now chief executive of a wealth management company in Florida, did not respond to emails that the NLJ sent to his corporate account and to an address linked to his New York bar attorney registration. Messages sent over more than a week asked Kempf to discuss why he decided to leave the Justice Department and whether he disputed the inspector general's investigative summary.

The summary report, published Aug. 29, said the deputy assistant attorney general resigned before the investigation concluded. Kempf left the Justice Department last year at a time when he was "dealing with some difficult family health issues that have taken a turn for the worse recently," a Justice Department statement said then, according to a report at the publication MLex. The DOJ statement said Kempf, returning to his home, "could address these matters more actively and effectively."

A spokesperson for the Justice Department's inspector general declined to comment about the Kempf investigation.

In a statement to the NLJ, a Justice Department spokesperson said the department "expects all employees to hold themselves to the highest standards of ethical and professional conduct."

"The department takes allegations of employee misconduct seriously, including claims that employees lacked candor when dealing with investigators," the spokesperson said. "Whenever misconduct allegations are made, the department takes appropriate action to investigate them and to ensure appropriate accountability, which may include a range of disciplinary actions, other career consequences, or criminal prosecution, if warranted."

Reported instances of federal employees or others accessing sexually explicit content on government computers are not uncommon. A 2018 investigation **published (<https://www.rollcall.com/news/policy/porn-still-turning-up-in-the-federal-workplace-despite-bans>)** by Roll Call identified dozens of examples where federal computer networks had been used to access pornography. Justice

Department information technology rules “expressly prohibit transmitting, receiving, storing or viewing sexually explicit material,” according to the DOJ inspector general’s office.

In the weeks since the summary report was released, the identity of the former Justice Department official had been a source of speculation within the legal community in Washington. The publication of the investigative summary attracted widespread news media coverage.

Sen. Chuck Grassley of Iowa, the Republican chairman of the Senate Finance Committee, asked the Justice Department to provide him with a full report on the inspector general’s investigation.

In the summary report, the inspector general’s office said it “initiated an investigation upon receipt of information from the employing DOJ division alleging that a then deputy assistant attorney general (DAAG) had been observed viewing sexually explicit images” on the deputy assistant attorney general’s government computers, in violation of Justice Department policy.

“An OIG forensic examination of two DOJ computers issued to the DAAG determined that the computers contained data regarding numerous sexually explicit website searches, visits to websites hosting sexually explicit videos, sexually explicit search engine terms, and sexually explicit images,” according to the investigative summary, which was posted online, with other unrelated investigative reports, on the inspector general’s website.

The summary said that the inspector general conducted an initial interview with the deputy assistant attorney general and that “the DAAG denied accessing or viewing sexually explicit websites or material from a government computer.” The report continued: “In a follow-up interview, after being confronted with the preliminary results of the OIG forensic examination, the DAAG ultimately admitted to the OIG that the DAAG may have intentionally accessed pornographic websites using government computers.”

A source familiar with the investigation said the forensic examination of Kempf's computers showed that, through the first half of 2018, hundreds of sexually explicit images had been accessed on websites with explicit photographs and videos.

The inspector general's office, according to the investigative summary, notified the Justice Department's Office of Professional Responsibility, or OPR, about its findings. The professional responsibility office reviews inspector general reports "to determine whether bar disciplinary authorities should be notified of any misconduct findings against department attorneys."

The Justice Department did not comment on whether it had informed any state bar officials about the misconduct findings involving Kempf. The investigative summary said the Justice Department declined to bring a criminal prosecution.

Kempf has been a member of the New York bar since 1986, but his status is identified as "delinquent." That designation does not prohibit him from practicing as a lawyer, but it "does subject him to potential suspension from the practice of law," a New York attorney discipline office said.

In May, the Florida-based wealth management firm Cypress Trust Co. said its board of directors had **appointed** (<https://www.cypresstrust.com/wp-content/uploads/2019/05/Cypress-Trust-Company-Names-Donald-G.-Kempf-Jr.-As-President-And-Ceo-New-Board-Chairman-And-Members-Appointed-1.pdf>) Kempf as president and chief executive. Kempf had been a member of the firm's board from 2011 to 2017, according to a financial disclosure he filed when he joined the Justice Department.

Cypress Trust's news release said Kempf is a "private practitioner, an AAA-and CPR-certified arbitrator and mediator and an adjunct professor of law." The release noted Kempf served in the Justice Department from 2017 to 2018 as a deputy assistant attorney general.

'Legend in Litigation' Lands at Main Justice

An octogenarian, Harvard Law School graduate and former U.S. Marine, Kempf hadn't regularly practiced law for many years before he joined the Justice Department in June 2017.

From 2006 to 2017, Kempf served as a neutral arbitrator in New York for the American Arbitration Association, according to his financial disclosure, a filing that many high-level executive branch employees are required to file. Kempf has taught at the University of South Carolina School of Law and at the University of Colorado Law School.

He **told** (<https://www.propublica.org/article/lifting-the-veil-on-another-batch-of-shadowy-trump-appointees>) ProPublica that he came out of retirement to join the Justice Department because "my country has been very good to me" and that he "welcomed the responsibility."

Kempf joined an antitrust division led by Assistant Attorney General Makan Delrahim, a former Brownstein Hyatt Farber Schreck partner who had served as deputy White House counsel in the early months of the Trump administration.



Makan Delrahim, Assistant Attorney General of the Antitrust Division. Credit: Diego M. Radzinski / ALM

Delrahim, in a speech in 2017, **called** (<https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-keynote-address-american-bar>) Kempf a “legend in litigation”—a description that has often appeared in news reports about him—and noted that they had both served more than a decade earlier on the Antitrust Modernization Commission, a 12-member panel formed under the George W. Bush administration to recommend updates to competition law. In another speech, Delrahim thanked Kempf “and all our service members for their service.”

Shortly after arriving at the Justice Department, Kempf **spoke** (<https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-donald-g-kempf-jr-delivers-remarks-american-bar>) at an American Bar Association event in Washington about “increasing the speed and reducing the burden of merger reviews.” Kempf had been “heavily involved in the division’s merger litigation,” **according** (<https://www.arnoldporter.com/en/perspectives/publications/2018/09/antitrust-agency-intelligence>) to an Arnold & Porter Kaye Scholer antitrust newsletter that briefly noted his retirement.

As the deputy assistant attorney general for litigation, Kempf was among the antitrust division leaders involved in the Justice Department’s failed bid to block AT&T Inc.’s takeover of Time Warner, a multibillion-dollar deal that was contested on the grounds it would suppress competition and drive up prices in the pay-TV industry. A federal judge in Washington last year **allowed** (<https://www.law.com/nationallawjournal/2018/06/13/att-judge-richard-leon-wasnt-mocking-trump-exclamation-points-are-his-mark/>) the deal to proceed.

Kempf brought a reputation as a proven antitrust litigator whose legal career at Kirkland & Ellis was studded with court victories. In 1997, Kempf was quoted as saying he “had a dramatic influence on the course of history in the antitrust field,” according to a July 2017 **profile** (<https://mlexmarketinsight.com/insights-center/editors-picks/antitrust/north-america/a-bulldog-in-court,-kempf-has-history-of-merger-wins,-spectacular-losses>) at MLex. The profile called Kempf a “go-to lawyer for merger litigation” for many years.

In the 1980s, Kempf successfully defended Great Lakes Chemical Corp. and Weyerhaeuser Co. against antitrust challenges from the Federal Trade Commission. He prevailed a decade earlier against the Justice Department when he defended General Dynamics Corp.'s acquisition of United Electric Coal Cos.

But there were setbacks. In 1997, Kempf was on the team representing Office Depot as it sought approval from the FTC for a proposed merger with Staples. The FTC went on to prevail against Staples and Office Depot in court.



Photo: Diego M. Radzinski/ALM

Kempf had served on the Kirkland & Ellis management committee from 1981 to 1998, and the firm at one time had named a conference room after him, according to an American Lawyer **report**

(<https://www.law.com/americanlawyer/almID/1143725004578/>). Kempf said on his law firm website, which highlights the scope of his legal career, that he was “lead trial and appellate counsel in many of the firm’s most significant cases.”

In 1999, Kempf ended his long career at Kirkland & Ellis to become the chief legal officer at Morgan Stanley, a position he held **until his retirement in 2005** (<https://www.morganstanley.com/press-releases/chief-legal-officer-donald-g->

kempf-jr-to-retire-after-successor-is-named_3679). Upon his departure from the investment bank, he was lauded for his “strong leadership and distinguished service to the firm.” The Minority Corporate Counsel Association, of which Kempf had been a board member, in 2005 praised him for his “commitment to advancing diversity.”

Kempf has received \$17,500 in monthly retirement income from Kirkland & Ellis, according to his financial disclosure, and \$1,500 monthly from Morgan Stanley.

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